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GOOGLE LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JANE DOE, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

PHE, INC. and GOOGLE LLC

Defendants.

Case No.

[Los Angeles County Superior Court Case
No. 24STCV00181]

DEFENDANT GOOGLE LLC'S
NOTICE OF REMOVAL OF ACTION
TO FEDERAL COURT

CLASS ACTION

Action Filed: January 3, 2024

Removal: February 7, 2024

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
 2 **RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant Google LLC (“Google”), by and
 4 through its undersigned counsel, hereby removes the above-captioned action from the
 5 Superior Court of the State of California for the County of Los Angeles (“Los Angeles
 6 Superior Court”), in which it is now pending, to the United States District Court for
 7 the Central District of California pursuant to 28 U.S.C. § 1441, on the grounds that
 8 federal jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28 U.S.C.
 9 § 1332(d). Pursuant to 28 U.S.C. § 1446(a), set forth below is a statement of the
 10 grounds of removal, and attached hereto as Exs. 1–6 are copies of all process,
 11 pleadings, and orders served to date in this case. Defendant PHE Inc. consents to
 12 removal.

13 **I. PROCEDURAL HISTORY**

14 1. On January 3, 2024, Plaintiff Jane Doe (“Plaintiff”) initiated an action in
 15 Los Angeles County Superior Court against PHE, Inc. and Google, on behalf of
 16 herself and a putative class, captioned *Jane Doe, on behalf of herself and all others*
 17 *similarly situated v. PHE, Inc. and Google LLC*, Case No. 24STCV00181 (the
 18 “Superior Court Action”). A true and correct copy of the Complaint is attached hereto
 19 as **Exhibit 1**.

20 2. The Complaint alleges one cause of action against Google for violation
 21 of the California Invasion of Privacy Act (“CIPA”), Cal. Pen. Code §§ 630–638.55.
 22 See Ex. 1 at ¶¶ 15–22 (pg. 29). The Complaint alleges that Google had an agreement
 23 with PHE—which operates an adult products website—whereby PHE used Google
 24 Analytics on PHE’s website, allowing Google to access confidential communications
 25 from website users without consent and in violation of CIPA. See *id.* at ¶¶ 37–38, ¶¶
 26 18–20 (pg. 29).

1 3. Google was served with the Complaint on January 8, 2024. A true and
2 correct copy of the Proof of Service of Summons filed January 12, 2024 is attached
3 hereto as **Exhibit 2**.

4 4. The docket in the Superior Court Action consists of:

- 5 a. The Complaint dated January 3, 2024 which is attached hereto as
6 **Exhibit 1**;
- 7 b. The Proof of Service of Summons dated January 12, 2024 which is
8 attached hereto as **Exhibit 2**;
- 9 c. The Summons dated January 3, 2024, a true and correct copy of
10 which is attached hereto as **Exhibit 3**;
- 11 d. The Civil Case Cover Sheet dated January 3, 2024, a true and
12 correct copy of which is attached hereto as **Exhibit 4**; and
- 13 e. The Notice of Case Assignment – Unlimited Civil Case dated
14 January 3, 2024, a true and correct copy of which is attached hereto
15 as **Exhibit 5**;
- 16 f. Other documents including Los Angeles Superior Court’s
17 Alternative Dispute Resolution Information Package, Voluntary
18 Efficient Litigation Stipulations, and defendant PHE Inc.’s notice of
19 appearance – a true and correct copy of these documents are
20 attached hereto as **Exhibit 6**.

21 **II. GROUNDS FOR REMOVAL**

22 5. Plaintiff’s claims are removable because CAFA provides this Court with
23 jurisdiction. *See* 28 U.S.C. §§ 1332(d), 1453. CAFA extends federal jurisdiction over
24 class actions where: (1) any member of the proposed class is a citizen of a state
25 different from any defendant (*i.e.*, minimal diversity exists); (2) the putative class
26 consists of more than 100 members; and (3) the amount in controversy is \$5 million or
27 more, aggregating all claims, and exclusive of interests and costs. *See* 28 U.S.C.
28 §§ 1332(d)(2), (5(B)). Each requirement is met here.

6. In fact, Plaintiff filed a complaint in federal court in the Central District of California that premised jurisdiction on CAFA. Compl. ¶ 9, *Doe v. PHE, Inc.*, No. 2:23-cv-08021 (C.D. Cal. Sept. 25, 2023), ECF No. 1. This filing provides further proof that this Court has original jurisdiction under CAFA.

A. Minimal Diversity

7. At least one class member and one defendant are citizens of different states. *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 577 n.6 (2004) (“We understand ‘minimal diversity’ to mean the existence of at least one party who is diverse in citizenship from one party on the other side of the case . . .”). Plaintiff is a citizen of California, Ex. 1 at ¶ 12, and Defendant PHE is a citizen of North Carolina, *id.* at ¶¶ 10, 14.

8. Because at least one member of the class, Plaintiff, is a citizen of a different state (California) from Defendant PHE (North Carolina), minimum diversity is satisfied.

B. Plaintiff Pleads The Class Size is Over 100

9. Plaintiff pleads that “thousands of California residents visit PHE’s Website each year.” *Id.* at ¶ 19. These users make up the putative class. *See id.* at 24 (defining class as including “thousands of members”); *see also id.* at 25 (“There are thousands of individuals who have used the Website and searched for adult products in California.”).

10. The Complaint’s allegations are therefore sufficient on their face to meet the class size requirement for CAFA. *See* 28 U.S.C. § 1332(d)(5)(b) (requiring class size to be greater than 100 to confer original jurisdiction under CAFA); *Beasley v. Lucky Stores, Inc.*, 379 F. Supp. 3d 1039, 1043 (N.D. Cal. 2019) (finding proposed class exceeded 100 members where the complaint alleged the class comprised of “thousands of individuals”); *Jian-Ming Zhao v. RelayRides, Inc.*, No. 17-CV-04099-JCS, 2017 WL 6336082, at *5 (N.D. Cal. Dec. 12, 2017) (same).

1 **C. The Amount In Controversy Exceeds \$5,000,000**

2 11. A defendant’s notice of removal need only include a plausible allegation
3 that the amount in controversy exceeds \$5,000,000. *See* 28 U.S.C. § 1332(d)(2)
4 (conferring original jurisdiction when “the matter in controversy exceeds the sum or
5 value of \$5,000,000, exclusive of interest and costs”); *Dart Cherokee Basin Operating*
6 *Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (requiring defendant to produce evidence
7 supporting amount in controversy only when plaintiff contests or the court questions
8 jurisdiction).

9 12. Statutory damages and attorneys’ fees can be aggregated to calculate the
10 amount in controversy under CAFA. *See Arisa v. Residence Inn by Marriott*, 936
11 F.3d 920, 922 (9th Cir. 2019) (finding attorneys’ fees are properly included in amount
12 in controversy calculation under CAFA); *Morey v. Louis Vuitton N. Am., Inc.*, 461 F.
13 App’x 642, 643 (9th Cir. 2011) (finding notice of removal sufficiently alleged that
14 amount in controversy met CAFA requirements by multiplying statutory damages and
15 number of potential violations).

16 13. Plaintiff pleads that she and the class—which allegedly consists of a
17 thousand members—are entitled to \$5,000 in statutory damages from Defendant PHE
18 for each time PHE disclosed information to Defendant Google **and** \$5,000 in statutory
19 damages from Defendant Google for each time Google received information from
20 PHE. *See* Ex. 1 at 30 (prayer for relief).

21 14. Even interpreting this putative class as containing only a thousand
22 members (the minimum amount of members alleged) and even assuming the
23 thousand-member class is alleged to have suffered only one violation from Defendant
24 PHE’s and Google’s purported misconduct, the aggregate amount in controversy
25 would be \$10,000,000 (1,000 x \$10,000 [the aggregate amount a class member would
26 allegedly be entitled to for one violation]).

27 15. But that is not all. The complaint also prays for “an award of attorney
28 fees and costs,” which is relevant to the amount in controversy. *Id.* Attorneys’ fees in

CIPA class actions have reached millions of dollars. *E.g., Medeiros v. HSBC Card Servs., Inc.*, No. CV1509093JVSAFMX, 2017 WL 11632870, at *9 (C.D. Cal. Oct. 23, 2017) (approving over \$4,000,000 in attorneys’ fees from class settlement fund for CIPA claim); *In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (awarding \$4 million in attorneys’ fees for class action CIPA claim). Factoring in such attorneys’ fees, it is more than plausible that the amount in controversy exceeds the \$5,000,000 threshold.

D. None Of The Exceptions To CAFA Jurisdiction Apply

16. CAFA contains various exceptions to or limitations on jurisdiction even if the diversity and amount in controversy requirements are met. *See* 28 U.S.C. § 1332(d)(3)–(5) (setting forth exceptions to CAFA when there is at least one defendant that is a citizen of the forum where state court action was filed).

17. None of the CAFA exceptions to or limitations on jurisdiction apply to this dispute.

a. The Home-State Controversy Exceptions

18. Under CAFA, a court must decline jurisdiction if two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state where the class action was originally filed. *Id.* § 1332(d)(4)(B) (“Mandatory Home-State Controversy Exception”). A court may decline jurisdiction if greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the class action was originally filed. *Id.* § 1332(d)(3) (“Discretionary Home-State Controversy Exception”).

19. For the exception to apply, *all* primary defendants must be citizens of the state in which the action was filed (*i.e.*, California). *See Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1068 (9th Cir. 2019); *see also Phillips v. Kaiser Found. Health Plan, Inc.*, 953 F. Supp. 2d 1078, 1087-88 (N.D. Cal. 2011) (“That test requires that *all* ‘primary defendants’ be residents of the same state in which the action was filed.”).

1 Because Defendant PHE is a primary defendant and is a citizen of North Carolina, not
2 California, the home-state exceptions do not apply.

3 20. CAFA does not define “primary defendants.” In *Singh*, the Ninth Circuit
4 held that “a court analyzing whether a defendant is a ‘primary defendant’” should
5 consider whether the defendant is sued directly or is alleged to be directly responsible
6 for the harm, as opposed to being vicariously or secondarily liable. 925 F.3d at 1067.
7 The fundamental inquiry is “whether a defendant is a ‘principal,’ ‘fundamental, or
8 ‘direct’ defendant.” *Id.*; see also *Corsino v. Perkins*, No. CV0909031 MMMCWX,
9 2010 WL 317418, at *5 (C.D. Cal. Jan. 19, 2010) (indicating that a primary defendant
10 is one who is allegedly directly liable to the plaintiffs, as opposed to a defendant who
11 is liable under a theory of vicarious liability or based on an indemnification
12 provision). For example, in *Singh*, the court ultimately found that American Honda
13 Finance Corporation was not a primary defendant because its liability stemmed from
14 the other defendants’ alleged bad acts, meaning it was not directly responsible for the
15 misconduct. 925 F.3d at 1067.

16 21. This case is different. Plaintiff alleges that Defendant PHE is liable for
17 its own acts of purported misconduct, namely its “willful” disclosure of “messages,
18 reports, and/or communications with Google via Google Analytics” without consent.
19 Ex. 1 at ¶¶ 8, 9–10 (Cause of Action I, page 28). Defendant PHE is thus alleged to be
20 liable—as a separate legal entity—for its own purported acts of misconduct and is
21 thus a “primary defendant.” See *id.* at 1068; *Harrington v. Mattel, Inc.*, No. C07-
22 05110 MJJ, 2007 WL 4556920, at *5 (N.D. Cal. Dec. 20, 2007 (holding Fischer-Price
23 was a primary defendant because plaintiff separately named it and alleged that it was
24 also allegedly liable).

25 22. For these reasons, the home state exceptions do not apply.

26 **b. The Local Controversy Exception**

27 23. Under CAFA, a court must also decline to exercise jurisdiction if
28 (1) greater than two-thirds of the members of all proposed plaintiff classes in the

1 aggregate are citizens of the state in which the class action as originally filed; (2) at
 2 least one defendant is a defendant (a) from whom significant relief is sought by
 3 members of the plaintiff class, (b) whose alleged conduct forms a significant basis for
 4 the claims asserted by the proposed plaintiff class, and (c) who is a citizen of the state
 5 in which the action was originally filed; (3) the principal injuries resulting from the
 6 alleged conduct or any related conduct of each defendant were incurred in the state in
 7 which the action was filed; and (4) during the three-year period preceding the filing of
 8 the class action, no other class action has been filed asserting the same or similar
 9 factual allegations against any of the defendants on behalf of the same or other
 10 persons. 28 U.S.C. § 1332(d)(4)(A).

11 24. This exception does not apply because in the preceding three years
 12 similar factual allegations in putative class actions have been made against Defendant
 13 Google and because this action involves nationwide conduct.

14 **i. The Three-Year Rule**

15 25. Defendant Google has faced the “same or similar factual allegations” in
 16 other class actions in the preceding three years. The local controversy exception
 17 therefore cannot apply. *See McCracken v. Verisma Sys., Inc.*, No. 6:14-CV-
 18 06248(MAT), 2017 WL 2080279, at *5 (W.D.N.Y. May 15, 2017); *Ivey v. Snapple*
 19 *Beverage Corp.*, No. CV 08-4408 CAS (EX), 2008 WL 2915122, at *1 (C.D. Cal.
 20 July 25, 2008) (actions involving “similar factual allegations” sufficient to bar use of
 21 local controversy exception).

22 26. There are a plethora of similar actions. *E.g.*, *Doe v. Google LLC*, 3:23-
 23 cv-02431-VC (filed May 17, 2023) (pleading naming Google as a defendant at Dkt.
 24 No. 1) (alleging Google unlawfully tracks, collects, and monetizes personal health
 25 information in violation of CIPA at paragraphs 306-08); *Doe v. GoodRx Holdings,*
 26 *Inc.*, 3:23-cv-00501-AMO (filed Feb. 2, 2023) (pleading naming Google as a
 27 defendant at Dkt. No. 1) (alleging Google received purported confidential information
 28 from GoodRx via Google Analytics in violation of CIPA at paragraphs 112, 117–20,

1 and 261-66); *Frasco v. Flo Health, Inc.*, 3:21-cv-00757-JD (filed Jan. 29, 2021)
 2 (amended pleading naming Google as a defendant filed Sept. 2, 2021 at Dkt No. 64)
 3 (alleging Google received purported confidential information from Flo Health via
 4 Google Analytics in violation of CIPA at paragraphs 97, 99, and 411).

5 **ii. The Principal Injuries Requirement**

6 27. The local controversy exception also does not apply because this case
 7 involves nationwide injuries.

8 28. California district courts have consistently refused to remand class
 9 actions that solely involve violations of California law but that are premised on
 10 nationwide conduct. *See R.A. by and Through Altes v. Amazon.com, Inc.*, 406 F.
 11 Supp. 3d 827, 834 (C.D. Cal. 2019) (collecting cases). This is true even when a
 12 putative class is limited to California residents. For example in *Altes*, even while the
 13 action involved violations of California law and a California class, the court held that
 14 the principal injuries exception did not apply because the underlying conduct was not
 15 limited to California. *Id.* Rather, because the device that formed the basis of the
 16 complaint was sold nationwide, the injuries were not “truly local.” *Id.* at 835.

17 29. Here, Defendant PHE operates the website nationwide, meaning its
 18 practice of disclosing information to Google without consent is in no way limited to
 19 California. *E.g., id.* (holding that plaintiff failed to meet the principal injury
 20 requirement because Amazon’s alleged practice of “recording and storing the
 21 communications of nonconsenting Alexa users” was not limited to California); *Winn*
 22 *v. Mondelez Int’l*, No. 17-CV-02524-HSG, 2018 WL 3151774 (N.D. Cal. June 28,
 23 2018) (holding local controversy exception did not apply to plaintiff’s putative class
 24 action alleging that defendants violated California law because Ginger Snaps were
 25 sold nationwide); *Beasley v. Lucky Stores, Inc.*, 379 F. Supp. 3d 1039, 1041, 1044
 26 (N.D. Cal. 2019) (rejecting local controversy exception because Coffee-mate was
 27 distributed and sold nationwide and not just in California). As a result, Plaintiff’s
 28

1 action is not “truly local.” *Waller v. Hewlett-Packard Co.*, No. 11CV0454-LAB
2 RBB, 2011 WL 8601207, at *4 (S.D. Cal. May 10, 2011).

3 30. Defendant PHE’s alleged sharing of data and Defendant Google’s alleged
4 receipt of that data would have injured users throughout the country. Such nationwide
5 impact is beyond the “narrow” local controversy exception. *Allen v. Boeing Co.*, 821
6 F.3d 1111, 1116 (9th Cir. 2016).

7 31. Accordingly, this Court has CAFA jurisdiction because there is minimal
8 diversity, the class size is greater than 100, the amount in controversy is greater than
9 \$5,000,000, and no exceptions apply.

10 **III. CONCLUSION**

11 32. For the foregoing reasons, this case is properly removed from the Los
12 Angeles Superior Court to the United States District Court for the Central District of
13 California.

14
15 Dated: February 7, 2024

WILLKIE FARR & GALLAGHER LLP

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